

9017/PMK  
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YANG MING MARINE TRANSPORT CORP.,  
YANGMING (UK) LTD. and ALL OCEANS  
TRANSPORTATION, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ENERGIZER S.A.,

Plaintiff,

- against -

M/V YM GREEN, her engines, boilers and  
tackle *in rem.*; YANG MING MARINE  
TRANSPORT CORP.; YANGMING (UK) LTD.;  
ALL OCEANS TRANSPORTATION INC.;  
KAWASAKI KISEN KAISHA LTD.; CONTERM  
HONG KONG LTD.; VANGUARD LOGISTICS  
SERVICES HONG KONG LTD.; FIEGE GOTH  
CO., LTD.; and SHENZHEN HIGH POWER  
TECHNOLOGY CO. LTD.

Defendants.

07 CV 7406 (LTS)

**YANG MING DEFENDANTS  
ANSWER TO THE INDEMNITY  
CLAIM CONTAINED IN  
PLAINTIFF'S REPLY TO THE  
COUNTER-CLAIM OF  
DEFENDANT FIEGE**

Defendants Yang Ming Marine Transport Corp. and Yang Ming (U.K.) Ltd.  
(hereinafter collectively referred to as "YM"), by its attorneys, Cichanowicz, Callan,  
Keane, Vengrow & Textor, LLP, hereby respond to the indemnity claim contained in  
plaintiff's reply to the counter-claim of defendant Fiege upon information and belief as  
follows:

1. Denies knowledge or information sufficient to form a belief as to the truth  
of the allegations of paragraph 1.
2. Denies the allegations of paragraph 2.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The shipments in question were carried from Hong Kong to Basel, Switzerland via Hamburg, Germany pursuant to defendant K-Line bill of lading contracts and were, therefore, subject to the Hague Visby Rules.

YM claims the benefit of all exceptions, exemptions and limitations contained in the Hague Visby Rules and K-Line bill of lading to the full extent they may be applicable to them.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The shipments in question were carried pursuant to bills of lading issued by defendant K-Line and, upon information and belief, pursuant to bills of lading issued by underlying defendant Non Vessel Operating Common Carrier (NVOCC) bills of lading.

YM claim the benefit of all exceptions, exemptions and limitations contained in any bills of lading issued by any VOCC or NVOCC defendants pursuant to which this cargo was carried on the basis of the Himalaya Clauses contained in such bills of lading to the full extent such provisions may be applicable to them.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Any damage that was caused to plaintiff's cargo was the direct result of an act, fault or neglect of plaintiff, its agents, suppliers, contractors, affiliates or subsidiaries and in regard to the manufacture, stowage, shifting, shipment, securing or packaging of the cargo in question.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

YM is not liable under the Hague or Hague Visby Rules for any loss or damage to plaintiff's cargo as alleged in the complaint since the alleged loss or damage occurred as a result of fire and such fire was not caused by the actual fault or privity of YM.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

The cargoes in question were shipped pursuant to a bill of lading contract issued by defendant K-Line which bill of lading provides that all actions and claims brought pursuant to such bill of lading shall be brought in the courts sitting in Tokyo, Japan.

All claims against YM should be dismissed in favor of jurisdiction in Japan.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

The shipments in question moved from Hong Kong to Basel, Switzerland via Hamburg on a foreign flag vessel pursuant to bills of lading issued by a Japanese carrier and therefore the instant action has no connection whatsoever with the Southern District of New York and should be dismissed on the basis of forum non-conveniens.

**WHEREFORE**, Defendants YML pray that the indemnity claim against them be dismissed together with costs, disbursements and attorneys' fees.

Dated: New York, New York  
April 9, 2008

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**CERTIFICATE OF SERVICE BY REGULAR U.S. MAIL AND BY ECF**

The undersigned declares under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen years and I am not a party to this action.

2. On April 9, 2008, I served a complete copy of Yang Ming Defendants Answer To The Indemnity Claim Contained In Plaintiff's Reply To The Counter-Claim Of Defendant Fiege, by regular U.S. mail and by ECF, to the following attorneys at their ECF registered address and mailing address:

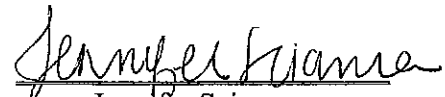
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Jennifer Scianna

DATED: April 9, 2008  
New York, New York